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October 22, 2019

VIA ECF

Honorable Freda L. Wolfson
United States District Court- District of NJ
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Court Room 5E
Trenton, NJ 08608

Re: In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation
MDL No. 2738

Dear Judge Wolfson:

I am writing in response to the PSC's letter dated October 18, 2019 informing the Court of the voluntary recall of Lot #22318RB of Johnson's Baby Powder and suggesting that the PSC may seek further *Daubert* briefing in light of this development.

J&J and JJCI are investigating this matter as quickly as possible to ensure that they take the right next steps on this issue. In particular, they are working to determine the integrity of the tested sample and the validity of the test results, including whether they were the result of cross-contamination.

Defendants strongly object, however, to any suggestion that this development merits reopening the *Daubert* hearing record or engaging in another round of briefing. The FDA's finding is not relevant to the Court's *Daubert* inquiry, for several reasons.

First, the question before the Court is whether plaintiffs have scientific evidence of causation, and this development does not move the needle on that question. Both sides' experts testified in large part that their opinions were based on the product as sold, whatever its contents. This is because a Bradford Hill analysis looks at several epidemiological factors (e.g., strength of association, consistency, dose response) that are based on exposure to the product in its totality; thus, an analysis of these factors does not turn on

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product contents. Moreover, as defendants noted in their briefing, the trace amounts of amphibole asbestos that Dr. Longo purported to find in baby powder samples would result in exposure far below the OSHA PEL and even further below the direct, prolonged and heavy occupational exposure that has been associated with ovarian cancer in epidemiological literature. *See* Rule 26 Report of H. Nadia Moore, Ph.D., DABT, ERT at 40-49, Feb. 25, 2019. By contrast, studies looking at environmental exposure did not detect an increased risk of ovarian cancer.

Second, the FDA findings involved trace amounts of asbestos in samples from one lot of Johnson's Baby Powder. There is no suggestion by the FDA that the product has been contaminated for the decades at issue in this litigation. To the contrary, the FDA has previously conducted testing and not detected asbestos in Johnson's Baby Powder. Indeed, the FDA recently reported on testing that did ***not*** detect asbestos in baby powder products.

Third, the FDA finding involved chrysotile, a form of serpentine asbestos. This variety of asbestos has not been associated with the Chinese mine that has been the source of JJCI talcum powder products since 2003. Nor has Dr. Longo claimed in this litigation that he found chrysotile in JJCI products. Rather, he has only claimed in his MDL report that he found very different forms of amphibole asbestos, which the FDA did not find in the lot at issue. Thus, the FDA findings undermine Dr. Longo's opinions, rather than supporting them.

We are available to discuss these matters at the Court's convenience.

Respectfully submitted,

/s/ *Susan M. Sharko*
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cc: All Counsel of Recod (via ECF)